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IN THE

# Supreme Court of the United States

October Term, 1962

No. 715

FORD T. JOHNSON, JR.,

*Petitioner,*

—v.—

VIRGINIA.

## PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF APPEALS OF VIRGINIA

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## PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF APPEALS OF VIRGINIA

Petitioner prays that a writ of certiorari issue to review the judgment of the Supreme Court of Appeals of Virginia entered in the above-entitled case on October 5, 1962.

### Opinions Below

Neither the Hustings Court of the City of Richmond nor the Supreme Court of Appeals of Virginia wrote an opinion in this case.

### Jurisdiction

The judgment of the Supreme Court of Appeals of Virginia was entered on October 5, 1962, and is printed in the appendix hereto, p. 9, *infra*. The jurisdiction of this Court is invoked under 28 U. S. C., §1257(3).

## Question Presented

Whether petitioner's rights under the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States were infringed by his conviction of contempt of court where there was no evidence of any misbehavior on the part of petitioner and was based solely on the fact that he refused to obey a direction that he move his seat from a portion of a city courtroom reserved for white persons and take a seat in a section of the courtroom set aside for Negroes.

## Statutes and Constitutional Provisions Involved

1. This case involves section one of the Fourteenth Amendment to the Constitution of the United States.

2. Section 18.1-292 of the Code of Virginia 1950 (1960 Replacement Vol.) provides as follows:

> "§18.1-292. *Cases in which courts and judges may punish summarily for contempt.*—The courts and judges may issue attachments for contempt, and punish them summarily, only in the cases following:
>
> (1) Misbehavior in the presence of the court, or so near thereto as to obstruct or interrupt the administration of justice;
>
> (2) Violence, or threats of violence, to a judge or officer of the court, or to a juror, witness or party going to, attending or returning from the court, for or in respect of any act or proceeding had or to be had in such court;
>
> (3) Vile, contemptuous or insulting language addressed to or published of a judge for or in respect

of any act or proceeding had, or to be had, in such court, or like language used in his presence and intended for his hearing for or in respect of such act or proceeding;

(4) Misbehavior of an officer of the court in his official character;

(5) Disobedience or resistance of an officer of the court, juror, witness or other person to any lawful process, judgment, decree or order of the court. (Code 1950, §18-55; 1960, c. 358.)"

3. Section 18.1-293 of the Code of Virginia, 1950 (1960 Replacement Vol.), provides as follows:

"§18.1-293. *Power of judge of court not of record to punish for contempt.*—A judge of a court not of record shall have the same power and jurisdiction as a court of record to punish summarily for contempt, but in no case shall the fine exceed fifty dollars, or the imprisonment exceed ten days, for the same contempt. (Code 1950, §18-256; 1960, c. 358.)"

## Statement

Petitioner Ford T. Johnson, Jr., a Negro resident of Richmond, Virginia, seeks review of his conviction of the crime of contempt of the Traffic Court of the City of Richmond. Petitioner was charged on a bench warrant with contempt of the Traffic Court of the City of Richmond and convicted in said court on April 27, 1962. This conviction was appealed to the Hustings Court of the City of Richmond where petitioner was tried by the court without a jury. On July 18, 1962, petitioner was convicted in the Hustings Court and sentenced to a fine of $10.00 and costs (R. 6).

At trial in the Hustings Court petitioner attempted to defend on the ground that he was being punished for violation of a racial segregation rule, but the court ruled that "the sole issue before the Court was that of contempt, and not whether the Traffic Court, which is a municipal court, was segregated." Counsel for petitioner excepted to this ruling of the court.

In the Hustings Court petitioner's counsel filed a written brief and argued orally that the conviction of petitioner for violating the segregation rule would deny petitioner's rights under the due process and equal protection clauses of the Fourteenth Amendment.

Petitioner timely filed a notice of appeal to the Supreme Court of Appeals of Virginia in which he asserted in his assignment of error that "there was no evidence of any misbehavior or disorderly conduct on his part and he was requested to move his seat because of his race and color, and that his refusal to so move constituted the real basis of the charge against him" (R. 2-3). Thereafter, petitioner filed a petition for writ of error (a certified copy of which is being filed with the record in this case) in which petitioner argued that his conviction was a violation of his rights under the due process and equal protection clauses of the Fourteenth Amendment. The State of Virginia filed a brief in opposition to the petition for writ of error in which the State argued that there was no merit in petitioner's assigned errors, relying in part upon a decision of the United States District Court for the Eastern District of Virginia which had refused to enjoin courtroom segregation as a proper exercise of judicial power, e.g., *Wells* v. *Gilliam*, 196 F. Supp. 792 (E. D. Va. 1961).

The evidence presented in petitioner's trial in the Hustings Court is summarized in a statement of facts

approved by the court (R. 7,9), no verbatim transcript of the proceedings in that court being available. The statement indicated that the clerk of the Traffic Court testified that petitioner was seated in front of him in the rear of the traffic courtroom in a section reserved for whites, that the bailiff requested petitioner to move and when petitioner refused, the bailiff reported this to the judge, who ordered that petitioner come before the bench of the court. The traffic court bailiff gave similar testimony stating that petitioner was seated on the left-hand side of the courtroom reserved for whites and refused to move. When petitioner was brought before the court he was told by the court to be seated on the right-hand side of the courtroom which was reserved for Negroes and, upon his refusal to do so when directed by the judge, he was arrested. The evidence indicated that petitioner was not using any loud and abusive language, was not creating any disturbance, and that the petitioner was arrested simply because he refused to be seated in the right-hand section of the courtroom which was reserved for Negroes when directed by the court. The assistant Commonwealth's attorney who was present gave similar testimony. Five witnesses who were present during the incident testified for the defendant that he created no disturbance and did nothing except to refuse to move his seat when directed to do so by the court. Petitioner Ford T. Johnson, Jr. testified to the same effect.

On October 5, 1962, the Supreme Court of Appeals of Virginia refused to grant a writ of error on the ground that the judgment appealed from was "plainly right" (p. 9, *infra*). The Chief Justice of the Supreme Court of Appeals stayed execution of the judgment pending disposition of a timely filed petition for certiorari in this Court.

## Reasons for Granting the Writ

The decisions of the courts below are in conflict with applicable decisions of this Court holding that racial segregation enforced by state officials on state property is unconstitutional.

This is a very plain and simple case of a criminal conviction based upon petitioner's refusal to obey a racial segregation rule in a city courtroom. The record indicates without dispute that petitioner was convicted of contempt merely because he refused to obey a judge's command that he take a seat in the section of a courtroom reserved for Negroes. Petitioner was ordered by a traffic court bailiff and then by the judge to move from the section of the Richmond Traffic Court reserved for white persons, and he was arrested and convicted for refusing to take a seat in the section reserved for Negroes.

This Court has made it clear beyond any doubt that state enforced racial segregation on governmental property violates the Fourteenth Amendment to the Constitution of the United States in a wide variety of decisions. See *Brown* v. *Board of Education*, 347 U. S. 483; *Mayor and City Council of Baltimore* v. *Dawson*, 350 U. S. 877; *Holmes* v. *Atlanta*, 350 U. S. 879; *New Orleans City Park Improvement Assn.* v. *Detiege*, 358 U. S. 54; *Cooper* v. *Aaron*, 358 U. S. 1; *Evers* v. *Dwyer*, 358 U. S. 202; *Burton* v. *Wilmington Parking Authority*, 365 U. S. 715; *Turner* v. *Memphis*, 369 U. S. 350; *Gayle* v. *Browder*, 352 U. S. 90; *Bailey* v. *Patterson*, 369 U. S. 31; *Shelley* v. *Kraemer*, 334 U. S. 1; *Buchanan* v. *Warley*, 245 U. S. 60.

It is also settled that the acts of the courts and the employees of the judicial branch of government constitute "state action" for purposes of the Fourteenth Amendment.

*Shelley* v. *Kraemer*, 334 U. S. 1, 14-18; *Ex parte Virginia*, 100 U. S. 339, 347; *Virginia* v. *Rives*, 100 U. S. 313, 318. The State has suggested no justification for the racial segregation practiced in this case and the fact that it took place in a courtroom does nothing to lend validity to the practice because racial segregation furthers no legitimate function of the states or their courts. Indeed, racial distinctions in courts of law are particularly inimical to the American ideal of equal justice for all which is embodied in the equal protection clause of the Fourteenth Amendment. Certainly since the Fourteenth Amendment prohibits racial segregation in a courthouse cafeteria operated by a concessionnaire as in *Derrington* v. *Plummer*, 240 F. 2d 922 (5th Cir. 1956), cert. denied, *sub nom. Casey* v. *Plummer*, 353 U. S. 924; then, *a fortiori*, such a practice must be prohibited within a courtroom at the direct command of the judge.

It is submitted that this case presents a question of public importance substantially affecting the administration of criminal justice and that notwithstanding the nominal punishment imposed upon petitioner, should be reviewed by this Court. The incidence of cases presenting similar issues demonstrates the widespread nature of courtroom segregation practices in various parts of Virginia and other jurisdictions as well. There is at least one case involving this question now pending on petition for certiorari before this Court, e.g., *Wood* v. *Virginia*, October Term, 1962, No. 79. See also, *Wells* v. *Gilliam*, *supra*; *Seniors* v. *Arnold*, 284 F. 2d 106 (5th Cir. 1960); *Wood* v. *Vaughn*, 4th Cir. No. 8689, appeal pending.

The conviction also denies due process in violation of the Fourteenth Amendment in that it was based upon no evidence of guilt. The record is clear that petitioner merely refused to obey a racial segregation rule and that there is no evidence that petitioner engaged in any conduct pro-

hibited by Va. Code §18.1-292. Petitioner's refusal to take a seat in the Negro section of the courtroom was justified since petitioner had a right to sit in a public courtroom on a nonsegregated basis. Therefore, petitioner's conduct could not be determined to be contempt of court except by the application of an unconstitutional segregation principle. To punish such conduct would be to punish for innocent acts without evidence of guilt or wrongdoing in violation of the due process clause of the Fourteenth Amendment. *Taylor* v. *Louisiana*, 370 U. S. 154; *Garner* v. *Louisiana*, 368 U. S. 157; *Thompson* v. *City of Louisville*, 362 U. S. 199.

## CONCLUSION

WHEREFORE, it is respectfully submitted that the petition for writ of certiorari should be granted.

Respectfully submitted,

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# APPENDIX

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Friday the 5th day of October, 1962.

The petition of Ford T. Johnson, Jr., for a writ of error and supersedeas to a judgment rendered by the Hustings Court of the City of Richmond on the 18th day of June, 1962, in a prosecution by the Commonwealth against the said petitioner for a misdemeanor, having been maturely considered and a transcript of the record of the judgment aforesaid seen and inspected, the court being of opinion that the said judgment is plainly right, doth reject said petition and refuse said writ of error and supersedeas, the effect of which is to affirm the judgment of the said hustings court.

A copy, Teste:

H. G. TURNER
*Clerk*

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# Supreme Court of the United States

**October Term 1962**

No. 715

FORD T. JOHNSON, JR.,

*Petitioner,*

v.

COMMONWEALTH OF VIRGINIA,

*Respondent.*

## BRIEF FOR RESPONDENT IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

**On Petition for a Writ of Certiorari to the Supreme Court of Appeals of Virginia**

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**On Petition for a Writ of Certiorari to the Supreme Court of Appeals of Virginia**

## BRIEF FOR RESPONDENT IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

### PRELIMINARY STATEMENT

By letter of the Honorable John F. Davis, Clerk of the Supreme Court of the United States, dated February 18, 1963, the Attorney for the Commonwealth of the City of Richmond was requested to file a response to the petition for writ of certiorari in the instant case.* In accordance with the request contained in the above mentioned communication, written by the Clerk at the direction of this Court, the within brief of the respondent in opposition to the petition for writ of certiorari is filed.

* Post, Appendix A.

On April 27, 1962, petitioner Ford was convicted in the Traffic Court of the City of Richmond of violating Section 18.1-292 of the Virginia Code (1950) as amended and was sentenced to pay a fine of $10.00 and costs. Said punishment was levied in accordance with Section 18.1-293 of the Virginia Code (1950) as amended. Upon appeal to the Hustings Court of the City of Richmond, he was again convicted and a like sentence was imposed on June 18, 1962. A writ of error was denied by the Supreme Court of Appeals of Virginia, and; thus, the judgment was affirmed on October 5, 1962. The cause is currently before this Court upon petition for writ of certiorari to the Supreme Court of Appeals of Virginia, filed in the Supreme Court of the United States by petitioner on January 2, 1963.

**STATEMENT OF FACTS**

On April 27, 1962, petitioner Ford was given a direct order by the Honorable Herman A. Cooper, Judge Traffic Court of the City of Richmond, while said Judge was sitting in Court and Court was in session to remove himself from in front of the bench and take a seat. Petitioner Ford refused to obey the said order given by the Honorable Herman A Cooper. After refusing to obey the order of the Court, petitioner was cited and summarily convicted of contempt.

The Traffic Court of the City of Richmond is a Municipal Court of the City of Richmond and is being operated pursuant to the charter of the City of Richmond and the Commonwealth of Virginia; that the Honorable Herman A. Cooper was duly appointed by the Judges of the court of record in the City of Richmond and was on April 27, 1962, and is now acting as the Judge of said Court. The seating space in the court room reserved for spectators and those awaiting the call of their cases before the court is assigned

on the basis of racial designation, the seats on one side of the aisle being for use of Negro citizens and the seats on the other side being for the use of white citizens. The same number of seats are available for citizens of each race. There is no separation of the races in the area before the bench or the bar of the Court. Only persons having business before the Court are permitted in that area when the Court is in session. The separation of the races in that portion of the court room reserved for spectators has been a long established practice, directed and enforced by every judge occupying the bench of said Court. The practice and custom has been and is for the purpose of preventing frictions between the races and to preserve order and decorum in the court room and to assure the orderly administration of justice to all, regardless of race or color. The segregation requirements have been enforced in the case of all citizens, white and Negro alike.

**THE STATUTE**

Under attack in the instant case are Section 18.1-292 and 18.1-293 of the Code of Virginia (1950) as amended, which provide:

> Section 18.1-292. Cases in which courts and judges may punish summarily for contempt.—
>
> (1) Misbehavior in the presence of the court, or so near thereto as to obstruct or interrupt the administration of justice;
>
> (5) Disobedience or resistance of an officer of the court, juror, witness or other person to any lawful process, judgment, decree or order of the court.
>
> Section 18.1-293. Power of judge of court not of record to punish for contempt.—A judge of a court

not of record shall have the same power and jurisdiction as a court of record to punish summarily for contempt, but in no case shall the fine exceed fifty dollars, or the imprisonment exceed ten days, for the same contempt.

## QUESTIONS PRESENTED

1. Did the petitioner violate the Virginia statute on contempt of Court: and if so, to what degree and in what manner?

II. Did the Court abuse the process thereof in charging and convicting the petitioner of contempt summarily under the factual situation?

III. May a judge of a court of the Commonwealth of Virginia or a political subdivision thereof arbitrarily classify citizens solely according to race or color and require them to sit in areas of the court according to said classification?

IV. Whether a citizen of the Commonwealth of Virginia may be legally charged with contempt of court based upon an order of the court which is founded on an unconstitutional classification of citizens of the United States of America?

V. Whether or not the Traffic Court of the City of Richmond, Virginia, had inherent power to charge and convict summarily by contempt without affording the petitioner an opportunity to secure counsel or be heard by a jury?

VI. Was the conviction of the petitioner a violation of "due process of law" guaranteed the petitioner under the Constitution of the United States and of the Commonwealth of Virginia?

VII. Was the conviction of the petitioner in derogation of his rights guaranteed by the Fourteenth Amendment of the Constitution of the United States of America?

## ARGUMENT

**I. The petitioner did violate Section 18.1-292 of the Virginia Code (1950) as amended and was in contempt of court.**

Section 18.1-292 of the Virginia Code (1950) as amended is clear and unambiguous and has been the uncontradicted law of the Commonwealth of Virginia since 1919. As is manifest from its terms, the statute does no more than states clearly and precisely what constitutes contempt of court. It states those acts or facts that are deemed contempt of court. The statute is so clear, concise, unambiguous and not subject to misunderstanding by anyone capable of reading English, that it is absolutely impossible not to be able to understand and know that the petitioner was defiant, and contemptuous in his actions and attitude toward the Court and thus was guilty of contempt of court. No other conclusion could be reached than that the petitioner did violate Section 18.1-292 of the Virginia Code (1950) as amended. Virginia Constitution, Section 63, permits the Legislature to regulate the rights of courts to punish for contempt. Further in Yoder vs. Commonwealth 107 Va. 823, it was established that the Virginia General Assembly "may regulate the exercise by courts of the right to punish for contempt" was not intended to clothe the Legislature with absolute power over the subject.

**II. The Court did not violate Section 18.1-292 or 18.1-293 of the Virginia Code (1950) as amended.**

Section 18.1-292 of the Virginia Code (1950) as amended has been fully discussed and covered in paragraph (I.) immediately above. It is perfectly clear from a reading of the statute that the Court had the right to find petitioner

guilty of contempt of court. Section 18.1-293 of the Virginia Code (1950) as amended is nothing more than a penalty statute and provides the maximum punishment for contempt of court in a court not of record, as is the Traffic Court of the City of Richmond. The punishment given to petitioner was well within the limits of the punishment allowed under said Section 18.1-293.

**III. The Judge of the Traffic Court of the City of Richmond does have the inherent power to conduct the proceedings and control the behavior in his Court as he deems proper.**

It is a well established rule of law that contempt of court has been recognized for centuries. It is recognized in the Commonwealth of Virginia that the Legislature by the Constitution of said Commonwealth, Section 63, has the right to regulate contempt of court but said Legislature does not have absolute power over the subject. Yoder vs. Commonwealth, supra. A judge is like a captain of a ship and his rule is absolute unless in violation of the laws governing said judge. To be otherwise would lead to chaos in that the judge would be powerless to preserve order and decorum and dispense justice. The power of the judge would include the right to arrange seating as deemed most expeditious just as a court may prohibit smoking in the court or bringing a briefcase into the court. The case of George Wells, et al vs. Honorable Herbert B. Gilliam, Chief Judge Petersburg Municipal Court, decided June 1, 1961, in the United States District Court, Eastern District of Virginia, in a case involving segregated seating according to race, the Court stated "that a judge has control of his court room and the conduct of those attending his court is axiomatic. In the administration of justice the judge is charged with

the preservation of order in his court and to see to it that justice is not obstructed by any person or persons whatever. Such is inherent in and incident to the exercise of the jurisdiction conferred upon him and is consonant with the power to punish for contempt committed in the presence of the court." The Court quoted 14 Am. Jur., Courts, Section 42 and 43. The Court also stated, "It is well established that all courts have the inherent power to prescribe such rules of practice and rules to regulate their proceedings and facilitate the administration of justice as they deem necessary. The power to maintain order, to protect itself or its officers from being disturbed in the exercise of their functions, and the power to punish individuals who fail to comply with the rules adopted by the court to that end, are probably the most important of all inherent powers of a court, since such powers are essential to the very existence of a court as a judicial tribunal." The Court cited, 14 Am. Jur., Courts, Section 150, 151, 153 and 171. In addition to this inherent power, it is very clear under the laws of Virginia that judges of the courts of record have control of the building in which their courts are maintained. Dawley vs. City of Norfolk 159 Fed. Supp. 642.

**IV. There is no order in this case based on an unconstitutional classification of the citizens of the United States of America.**

The order given by the Court was a proper order and was an order that was essential for the proper conduct of the business and of the decorum of the Court. Clearly the Court cannot proceed with dispensing justice, when a person charged with a violation is not being tried stands in front of the bench and defies and disobeys a direct order of the Court when said Court is in session.

**V. The Traffic Court of the City of Richmond, Virginia has inherent power to summarily convict and punish petitioner for contempt of court without affording him an opportunity to secure counsel or be heard by a jury.**

Section 18.1-292 and 18.1-293 of the Code of Virginia (1950) as amended and fully described, supra, clearly gives the court the right to convict and punish one guilty of contempt. In Carter vs. Commonwealth 96 Va. 790, the Court stated "There is inherent power of self-defense and self-preservation in the courts of this state created by the Constitution. This power may be regulated by the Legislature, but cannot be destroyed or so far diminished as to be rendered ineffectual. It is a power necessarily resident in and to be exercised by the court itself, and the Legislature cannot deprive such courts of the power to summarily punish for contempt by providing for a jury trial in such case." The identical language of the Carter vs. Commonwealth case was quoted in Burdett vs. Commonwealth 103 Va. 838.

**VI. The conviction of the petitioner was not a violation of "due process of law" guaranteed the petitioner under the Constitution of the United States and Commonwealth of Virginia.**

By virtue of the Constitution of the Commonwealth of Virginia, Section 63, the General Assembly has the right to regulate contempt of court. The General Assembly of said Commonwealth exercised its right by the law set forth in Section 18.1-292 and 18.1-293 of the Code of Virginia (1950) as amended. The finding of the petitioner guilty of contempt of court and his punishment was in compliance with the Code sections enumerated and was not a violation of due process of law.

**VII. The conviction of the petitioner was not in derogation of his rights guaranteed by the Fourteenth Amendment to the Constitution of the United States of America.**

The Fourteenth Amendment to the Constitution does not grant any rights to citizens of the United States. It provides only that no state shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; or shall any state deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

There is no law in the Commonwealth of Virginia or ordinance of the City of Richmond that requires the separation of the races in the spectators section of the Traffic Court of the City of Richmond. The Federal courts have consistently held that the State courts are separate, distinct, judicial bodies. Abstinence, in state affairs, when not in conflict with the United States Constitution, has long been the federal policy. Harrison vs. NAACP, 360 U.S., 167, "This now well-established procedure is aimed at the avoidance of unnecessary interference by the federal courts with proper and validly administered state concerns, a course so essential to the balanced working of our federal system." Matthews vs. Rodgers, 284 U.S. 521, 525, "a scrupulous regard for the rightful independence of state governments **** should at all times actuate the federal courts."

If citizens of the United States had the right to determine where they may sit in the Traffic Court of the City of Richmond they have the right to applaud, the right to take pictures, and many other similar rights; carried to the extreme, proper court room decorum and order would be nonexistent. To restrict a court in the seating of people in

the court would further prevent a court from clearing the court room of all spectators in order to maintain decorum and order.

There is no allegation of or offer of proof that the order complained of is not being enforced equally among all citizens regardless of race or color.

## CONCLUSION

For the foregoing reasons, counsel for the Commonwealth submits that the actions of the Honorable Herman A. Cooper, Judge of the Traffic Court of the City of Richmond was proper and that there was no violation of the law of the Commonwealth of Virginia, the Constitution of the United States of America or the Constitution of the Commonwealth of Virginia and that the petition for a writ of certiorari in this case should be denied.

Respectfully submitted,

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J. ALVERNON SMITH, JR.

*Assistant Attorney for the Commonwealth for the City of Richmond, Virginia*

City Hall—Room 103
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OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON 25, D. C.

February 18, 1963

THE HONORABLE T. GRAY HADDON
Commonwealth's Attorney
City Hall
Richmond 19, Virginia

RE: JOHNSON v. VIRGINIA
*No. 715, October Term, 1962*

Dear Sir:

A petition for writ of certiorari was filed in this Court on January 2, 1963 in the above-entitled case, and my records indicate that you were served with a copy of the petition on or about January 2, 1963.

I have been directed by the Court to request that you file a response to such petition and 40 copies of your response, with service, should reach this office by March 20, 1963.

Very truly yours,

JOHN F. DAVIS, *Clerk*

*By /s/* E. P. CULLINAN
E. P. CULLINAN
*Chief Deputy*

EPC: jmh
cc: ROLAND D. EALEY, *Esquire*
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Richmond 19, Virginia